

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7317 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

DINESHBHAI D MISTRY

Versus

COMPETENT AUTHORITY AND ADDL. COLLECTOR

Appearance:

MR NK MAJMUDAR for Petitioners
GOVERNMENT PLEADER for Respondent No. 1
MR MD PANDYA for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/07/98

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioners have challenged the inaction of the part of the respondents in not issuing No Objection Certificate and development permission in respect of the land admeasuring 5134 sq.mtrs. out of land bearing Survey No. 206 situated in village Sama in Vadodara Urban Agglomeration. The petitioners have also prayed for a direction to the respondents to grant development permission and No Objection Certificate in respect of the aforesaid land.

2. By order dated 19.10.1988 (Annexure "A"), the Competent Authority had declared the lands admeasuring 19681 sq.mtrs. of the heirs of Shri Somabhai Fakirbhai as excess vacant land. Thereafter, the Competent Authority considered the request of the holders as to which land the holders wanted to retain and which land was to be declared as surplus. In view of the request made by the holders, the Competent Authority by his order dated 19.5.1990 declared that the holders were entitled to retain in all 13,898 sq.mtrs. of land from three survey numbers and 19,681 sq.mtrs. of land out of five survey numbers were declared to be surplus. The present petition is concerned with survey No. 206, admeasuring 10927 sq.mtrs. in all. As per the aforesaid order of the Competent Authority passed on 19.5.1990, the holders are entitled to retain 5134 sq.mtrs. out of the land bearing survey No. 206 and 5793 sq.mtrs. out of that survey number is declared as surplus.

3. Thereafter, the holders applied to the authorities for permissions under the relevant statutes. The Vadodara Urban Development Authority (VUDA) vide its order dated 31.1.1989 granted development permission. The DDO granted N.A. permission on 15.12.1989 and on 4.3.1993, the Competent Authority under the ULC Act also granted permission under Section 26 of the Act for selling the land admeasuring 5134 sq.mtrs. in survey No. 206 being the land within the ceiling limit. Pursuant to the aforesaid permission, the petitioners purchased the land from the original holders.

4. It appears that the permission granted by the VUDA in the year 1989 was on the basis of the order dated 19.10.1988 passed by the Competent Authority where the area to be retained by the original holder was 7509 sq.mtrs. out of survey No. 206 and the area to be surrendered was 3418 sq.mtrs. out of survey No. 206. In view of the change of ownership as well as change in the area to be retained and surrendered as per the second order dated 19.5.1990, the petitioners were required to apply to VUDA for their permission. That permission was not granted by VUDA as per their communication dated 14.9.1995 on the ground that the petitioner had not obtained the No Objection Certificate from the Competent Authority under the ULC Act. The petitioners, however, persisted with the request and, therefore, the VUDA again turned down the petitioners' request on 19.7.1997 (Annexure "E") on the same ground.

5. The learned counsel for the petitioners has

referred to the application dated 4.10.1996 made to the Competent Authority under the ULC Act for No Objection Certificate in respect of the land admeasuring 5134 sq.mtrs. in revenue survey No. 206 so that on the basis of such No Objection Certificate, the petitioners can again approach the VUDA for development permission. The Competent Authority has not given any reply to the petitioners and, therefore, the petitioners have approached this Court for the aforesaid reliefs.

6. Having heard the learned counsel for the parties, in the facts and circumstances of the case, it appears to the Court that interests of justice would be served if the petition is disposed of with the following directions:-

(i) Within two months from the date of receipt of a certified copy of this order, the Competent Authority & Additional Collector (ULC), Baroda, respondent No. 1 herein, shall consider and decide the petitioners' application dated 4.10.1996 for No Objection Certificate for development permission in respect of the land admeasuring 5134 sq.mtrs. out of revenue survey No. 206.

(ii) In order to enable the Competent Authority to consider the aforesaid application, the petitioners shall physically demarcate the boundary dividing survey No. 206 into two parts, one consisting of the land admeasuring 5134 sq.mtrs. which is already permitted to be retained by the holders (and their successor in interest) as per the Competent Authority's order dated 19.5.1990 at Annexure "A" to the petition and the other part admeasuring 5397 sq.mtrs. which is declared as excess vacant land.

The learned counsel for the petitioners states that the petitioners shall do so within one month from today.

(iii) In case the Competent Authority requires any further information, the same shall be sought from the petitioners within one month from the date of receipt of a certified copy of this order and the Competent Authority shall thereafter take a final decision in the matter (after making physical verification of the site) within one month from the date of receipt of such information from the petitioners.

7. The petition is accordingly disposed of in terms of the aforesaid directions.

Liberty to apply in case of difficulty.

July 23, 1998 (M.S. Shah, J.)